

A RESOLUTION AMENDING THE
LEASE AND APPROVING THE
EXTENSION OF THE LEASE
BETWEEN THE CITY OF FORT
WAYNE AND APCOA, INC.

WHEREAS, The Common Council approved the Lease Agreement between the City of Fort Wayne and APCOA, INC., by Resolution R-61-90, on October 23, 1990, attached hereto as Exhibit "A" and made a part hereof, for the Civic Center Parking Garage; and

WHEREAS, the City and APCOA, Inc. desire to amend said Lease and exercise APCOA, Inc.'s option to extend the Lease for an additional five (5) years.


NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. The Lease Amendment between the City of Fort Wayne and APCOA, Inc., and option to extend the Lease, attached hereto as Exhibit "B" and made a part hereof, is hereby approved and agreed to.

SECTION 2. That this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM
AND LEGALITY


J. TIMOTHY MCCAULAY, CITY ATTORNEY

A RESOLUTION of the Board of Public Works of Fort Wayne, Indiana, amending the lease and approving the extension of the lease between the City of Fort Wayne and APCOA, Inc. (subject to approval of Fort Wayne City Council and the Mayor of Fort Wayne.

1990

WHEREAS, The Fort Wayne Board of Public Works approved the Lease Agreement between the City of Fort Wayne and APCOA, Inc., by resolution on October 3, 1995, and said Lease (attached hereto as Exhibit A) was given final approval by the Fort Wayne Common Council on October 23, 1995; and

WHEREAS, The City and APCOA, Inc., desire to amend said Lease and exercise APCOA, Inc.'s option to extend the Lease for an additional five (5) years;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF FORT WAYNE, INDIANA:

1. The Lease Amendment between the City of Fort Wayne and APCOA, Inc., and option to extend the Lease, attached hereto as Exhibit B and made a part hereof, is hereby approved and agreed to.

2. This Resolution shall be in full force and effect from and after its passage and any and all necessary approvals by the Fort Wayne Common Council and the Mayor of Fort Wayne.

DATE: 4/5/95

BOARD OF PUBLIC WORKS

Linda Buskirk
Linda Buskirk, Chairman

C. James Owen
C. James Owen, Member

Terrance P. McCaffrey
Terrance P. McCaffrey, Member

ATTEST:

Patricia J. Crick
Patricia J. Crick, Clerk

Read the first time in full and on motion by Henry, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room-128, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 4-11-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Ravine, seconded by _____, and duly adopted, placed on its passage. PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>5</u>			<u>4</u>
BRADBURY				<u>✓</u>
EDMONDS				<u>✓</u>
GIAQUINTA				<u>✓</u>
HENRY				<u>✓</u>
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 4-25-95

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. P-20-95 on the 25th day of April, 1995

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Don J. Schmitter
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 26th day of April, 1995, at the hour of 3:00 o'clock P, M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 1st day of May, 1995, at the hour of 8:00 o'clock P A.M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

BILL NO. R-95-04-04

REPORT OF THE COMMITTEE ON
FINANCE
THOMAS C. HENRY - CHAIR
MARK E. GIAQUINTA - VICE CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS

REFERRED AN (~~ORDINANCE~~) (RESOLUTION) AMENDING THE LEASE AND
APPROVING THE EXTENSION OF THE LEASE BETWEEN THE CITY OF FORT WAYNE
AND APCOA, INC.

HAVE HAD SAID (~~ORDINANCE~~) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(~~ORDINANCE~~) (RESOLUTION)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

Mark E. Giaquinta

Thomas C. Henry

W. S. D. L.

James P. Mackay

Mark E. Giaquinta

Thomas C. Henry

Clerk R. Edmonds

DATED: 1-25-95

Sandra E. Kennedy
City Clerk

LEASE OF PARKING GARAGE FACILITY

This LEASE is made and entered into this 23rd day of October, 1990 by and between THE CITY OF FORT WAYNE and FORT WAYNE PUBLIC TRANSPORTATION CORPORATION, hereinafter collectively referred to as "Landlord", and APCOA, INC., hereinafter referred to as "Tenant",

W I T N E S S E T H:

WHEREAS, Landlord is the owner of real property hereinafter described; and

WHEREAS, Landlord desires to lease said real property to Tenant, and Tenant desires to lease same from Landlord.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein set forth, Landlord and Tenant agree as follows:

1. PREMISES. Landlord hereby leases to Tenant that portion of certain real property containing a parking garage known as the Civic Center Parking Garage and more particularly described on Exhibit A attached hereto and incorporated herein, which garage consists of two buildings referred to as Phase I and Phase II. Phase I having 460 parking spaces and Phase II having 587 parking spaces, all with sufficient area for access to each space together with any equipment and improvements thereon and with all appurtenances thereto including but not limited to existing rights of egress and ingress on to said premises by motor vehicles and pedestrians from all existing streets or roadways (all of which shall hereinafter collectively be referred to as the Premises.

2. WARRANTIES AND CONDITION. Landlord warrants and represents that it is the owner of the Premises and has authority to lease the Premises and to execute this Lease; that the laws and/or ordinances affecting the Premises do not prohibit the uses herein provided. Landlord further warrants and covenants that (a) at the commencement of the term herein the Premises shall be in good condition and repair for use as a parking facility for motor vehicles, (b) the Premises shall comply with all laws, regulations, ordinances and codes now in effect or which become effective during the term herein, and (c) Landlord has not received any notice and is not aware of any violations of any local, state or federal laws or regulations affecting the Premises, including, but limited to, the Occupational Safety and Health Act of 1970, and (d) Landlord shall be responsible for compliance with all environmental matters.

3. USE. The Premises shall be used by Tenant as a parking facility for motor vehicles, and any other purpose or purposes incidental thereto, including but not limited to, the right to place any personal property (including trade fixtures) in or on the Premises.

In the event Tenant is unable, by reason of injunction or other interference, to use the Premises for parking of motor vehicles, or in the event such use is or becomes prohibited by ordinance, law, regulation or order, Tenant shall have the option of cancelling this Lease, upon giving Landlord at least ten (10) days' notice in writing.

4. **TERM.** The Premises are hereby leased to Tenant for a term of five (5) years, commencing on November 1, 1990 and expiring on October 31, 1995 (the "Initial Term"). Thereafter, this Agreement shall be renewed automatically from year to year unless terminated by written notice sent by either party to the other at least sixty (60) days prior to the end of the Initial Term or any renewal term.

In the event Landlord is unable to or shall not have given possession of the Premises to Tenant on or before said commencement date, Tenant shall have the option of cancelling this Lease by notice in writing within thirty (30) days thereafter. In the event Tenant does not so cancel this Lease, it shall remain in full force and effect, and Landlord shall tender possession of the Premises to Tenant at its first opportunity, and the term hereof shall commence on the date of delivery of such possession and, at the option of Tenant, shall terminate on the above stated date or five (5) years after the date possession shall have been given to Tenant. The parties will confirm such date of possession in writing.

5. **RENT.** Tenant covenants and agrees to pay as rent for the Premises the sum of Four Hundred Twenty Thousand Dollars (\$420,000.00) per year, payable in equal monthly installments of \$35,000.00, in advance, on the first day of each month, plus seventy and one-tenth percent (70.1%) of gross receipts collected each year in excess of Six Hundred Thousand Dollars (\$600,000.00). Payment of percentage rent, if any, shall be made within 30 days after the end of each contract year based upon the gross receipts of the preceding contract year. Tenant shall annually, within sixty (60) days after the end of each contract year, furnish Landlord with an accounting audited by Tenant's certified public accountant verifying the amount of percentage rent owed to Landlord. Additionally, Landlord shall have the option, within sixty (60) days after the end of any contract year, to have a rental compliance audit by an independent certified public accountant of its choice. If the percentage rent paid shall be found to be underpaid by more than 10%, Tenant shall pay the cost of the audit, the amount of underpaid rent and interest on the underpaid rent from the end of the contract year until payment at the prime interest rate published in the Wall Street Journal on the date the underpayment is determined.

Gross receipts as used herein shall mean all sums collected by Tenant from the parking of motor vehicles on an hourly, daily, weekly or monthly basis, advertising revenues if any, vending commissions, if any, or other funds paid to Tenant as a result of its tenancy. Excluded from the term Gross Receipts shall be all refunds, discounts and allowances made by Tenant to its customers and any sales, use, excise, occupancy, gross receipts, parking tax or any other tax or charge

collected by Tenant on behalf of and payable to a tax collector.

6. MONTHLY REPORTING. Tenant shall provide monthly reports to Landlord. Said reports shall list gross receipts broken down between Phase I and Phase II by month and year to date, number of full-time monthly leases in each Phase, number of 12-hour monthly leases in each Phase, number of early bird sales and number of times maximum capacity has been reached each month.

7. MAXIMUM NUMBER OF MONTHLY LEASES. Recognizing the need for the Phase II premises to provide parking for the Convention Center, Parties agree that not more than fifty percent (50%) of said Phase II spaces other than the 75 monthly spaces leased to the Hilton Hotel shall be leased on a monthly basis. It is the further intent of the parties that daily "early bird" discounted parking arrangements or discounted monthly interruptable leases are preferred methods to increase occupancy. It is contemplated that Phase I spaces will be fully leased.

8. SURFACE PARKING. In addition to the parking spaces within the structure hereinabove defined, 32 surface parking spaces exist along the vacated alley between the structures. Tenant shall have the right to market said spaces which shall also be deemed part of the Premises for purposes of this Lease.

9. STATEMENT OF UNDERSTANDING.

(A) Tenant acknowledges its understanding of the various lease agreements and interlocal agreements currently in effect, as well as Board of Works resolution and City Council resolutions which affect Phase I parking garage operations and revenues.

(B) Tenant shall be responsible to, in its normal operations, accommodate the parking space requirements of such lease agreements and interlocal agreements. To the extent that Landlord's performance of its obligations such as structural maintenance and repair interferes with Tenant's abilities to provide the required Phase I parking spaces under such Leases or interlocal agreements, Landlord shall provide alternative spaces at its expense and shall not cause a diminution in lease payments to Tenant.

(C) The terms of this contract include the terms of the request for proposals and all addenda issued during the proposal process. In case of conflict between provisions of this contract and the request for proposals and addenda thereto, the provisions of this contract shall control.

10. PARKING RATES. Parking rates to be charged by Tenant shall be not less than those currently in effect, as established by Landlord. Landlord agrees that it will review the parking rate structure periodically, but not less than once each year. Tenant shall make available to Landlord analyses of traffic distribution, a comparison of rates at other comparable parking facilities, and its

recommendations to the Downtown Traffic Management Board as to Phase II and to the Board of Public Works as to Phase I (collectively or singularly the "Board"). Landlord and the Board agree that it/they shall not unreasonably withhold approval of any requested rate adjustment, and will act promptly and expeditiously to implement such rate adjustment. Tenant may, at its option, add to such rates the amount of any tax on sales, services or gross receipts, and such tax shall not be considered a part of gross receipts.

Parties acknowledge that certain informal discounted arrangements have existed. Tenant shall notify the Downtown Management Board of proposed discounted arrangements by letter which arrangements shall become effective only upon approval by such board.

11. INSPECTION. Tenant hereby grants Landlord the right to inspect the Premises at all reasonable times for the purpose of making repairs thereto, provided however, Landlord and its employees, agents and representatives shall exercise care in any entry onto and use of any portion of the Premises so as not to interfere with the operations of Tenant, including access to the Premises by parking customers. Should such access be interfered with or prevented or parking space be removed from Tenant's use by the actions of Landlord, its employees, agents or representatives, Tenant shall have the right to reduction in rent in proportion to the loss of gross receipts.

12. INSURANCE. Tenant shall at its own expense and at times during the term of this Agreement and any extension thereof obtain and secure garage keepers public liability insurance in the amount of One Million Dollars (\$1,000,000) of combined limits and property damage insurance in the amount of Two Hundred Thousand Dollars (\$200,000). Tenant agrees to keep, save and hold the Landlord harmless of and from any and all claims for injury or damages arising out of or in connection with Tenant's negligent acts or omissions in its operation of the parking facilities. Such insurance shall name both Landlords, as additional insureds. Said insurance shall be obtained in companies qualified to write insurance in the State of Indiana and approved by the Landlord. Tenant shall furnish Landlord with a certificate evidencing such insurance coverages which shall contain provisions providing notice to Landlord and PTC before such insurance may be terminated.

13. TAXES. Landlord agrees to pay any and all real estate taxes and assessments levied upon or assessed against the Premises as same become due and, upon request, provide Tenant with evidence of such payment.

14. UTILITIES. Landlord agrees, at Landlord's cost, to provide to points of use on the Premises such utilities as Tenant may require. Tenant agrees to pay charges for all electricity, water, sewer, telephone, gas and other utilities consumed by Tenant on the Premises as measured by a meter or sub-meter installed and maintained by Landlord at Landlord's cost.

15. PERMITS AND LICENSES. Tenant agrees to obtain all permits or licenses necessary for its operation, and Landlord agrees to assist Tenant in obtaining such permits or licenses upon request. Tenant shall have the right to terminate this Lease without liability hereunder if it is unable to obtain or retain any required permit or license, preventing commencement or continuation of operations. Such termination shall be effective on the date notice is given.

16. EMINENT DOMAIN.

(A) In the event the entire Premises shall be taken under any statute or by right of eminent domain, then when possession of the Premises is taken, this Lease shall automatically terminate and the rent shall be adjusted as of the time of such taking.

(B) If a partial taking or condemnation (i) results in a loss of 10% or more of the parking spaces, or (ii) results in a reduction of Tenant's gross receipts by 10% or more over a period of not less than thirty (30) days nor more than six (6) months, so as to render Tenant's operations economically unfeasible, or (iii) adversely affects access to the Premises, then Tenant shall have the right, at its option, to remain in possession of the balance of the Premises, paying rent as mutually agreed upon for the remainder of the term, or to terminate this Lease as of the date of such taking, upon notice in writing to Landlord of such election.

(C) Landlord shall notify Tenant immediately upon receiving notice or otherwise becoming aware of the intended taking (in whole or in part), and the actual or anticipated date of taking. In the event of termination of this Lease, Tenant shall thereupon be released from any further liability as of the date of taking. If this Lease is terminated, any rent for the last month of Tenant's occupancy shall be prorated.

(D) If Tenant elects to remain in possession of the balance of the Premises, the new rent shall be renegotiated between the parties.

(E) If, at the time of total taking, Tenant shall not have been fully reimbursed for the unamortized amount of any expenditures for capital improvements, alterations or equipment made to or installed on the Premises by Tenant, Landlord shall and does hereby assign to Tenant so much of such award by the condemning authority as is equal to but not in excess of the unamortized amount of Tenant's said expenditures.

(F) It is understood and agreed that Tenant shall not be entitled to any portion of any award or settlement received from condemning authority. Nothing contained herein shall be construed to prevent Tenant from prosecuting any claim directly against the condemning authority for loss of business or amortization of, damage to or cost of removal, or for value of, Tenant's personal property, provided that no such claim shall diminish or otherwise adversely affect Landlord's award.

(G) Tenant shall have the right to remove any and all of its personal property (including trade fixtures) prior to the date of such taking.

17. UNFORESEEABLE EVENTS. It is understood by the parties that, although it is unlikely, an event or condition may occur during the term of this Lease which is beyond the reasonable control of Tenant, which will result in a reduction of gross receipts collected from the Premises. Such events or conditions include, but are not limited to:

- (a) Any street serving the Premises is closed for at least seven (7) days.
- (b) Any interference with ingress to or egress from the premises
- (c) Labor disputes, civil commotion, war, or other casualty.
- (d) Acts of God.
- (e) Any law, rule, executive order or governmental decree by any government agency restricting the sale or supply of petroleum products.

If, as a result of such an event or condition, gross receipts are reduced by ten percent (10%) or more over a period of five (5) days or in the case of item (e) thirty (30) days, then Tenant, at its option, may upon written notice to Landlord, elect to have the parties negotiate in good faith a reasonable reduction in rent in a manner and to an extent reasonably related to the adverse effect on gross receipts including the period such reduction shall be in effect. While such negotiations are pending (not to exceed thirty (30) days from date of receipt of said notice from Tenant) rent payments shall be deposited in escrow in an interest bearing account until a final conclusion is reached. If the parties cannot reach a mutual agreement within thirty days, such determination shall then be made by arbitration, based on the reduction in gross receipts, by three disinterested persons, one of whom shall be selected by Landlord, one by Tenant and the third by the two thus appointed. The decision of the arbitrators shall be final and binding on the parties hereto.

18. DAMAGE AND DESTRUCTION. Landlord covenants and agrees that if the Premises are damaged or destroyed by fire or other casualty, either party shall have the right at its sole option to elect to (a) terminate this Lease, effective on the date of such damage or destruction, provided twenty percent (20%) or more of the Premises are rendered unusable for the parking of motor vehicles. Tenant shall not longer be liable for rent after such termination and, if advance rent has been paid, Landlord shall refund the prorata portion thereof upon termination of this Lease, or (b) continue to occupy and use any undamaged part of the Premises which is fully available for use, in which event the parties agree to negotiate a new rent schedule taking into consideration the loss of parking spaces

and loss of gross receipts anticipated, or (c) abate the rent from the date of such damage or destruction until such time as Landlord has repaired and restored the Premises to the same condition as existed immediately prior to such damage or destruction, without diminution or change of location or size, and delivered same to Tenant.

In the event Tenant elects either options (b) or (c) in the preceding paragraph, it is understood by the parties that time is of the essence and that Landlord will proceed with due diligence to repair and restore the Premises to the condition as existed before such damage or destruction. Tenant's election shall be made by written notice to Landlord within ten (10) days after the date of such damage or destruction and shall be effective as of such date.

In the event more than 10% but less than 20% of the premises is rendered unusable by reason of fire or other casualty, Parties agree that a new rent schedule shall be negotiated reflecting a reduced rental in proportion to the unusable space until the premises are restored. Said reduced rental shall run from the date of destruction or damage.

19. REPAIR AND MAINTENANCE. Tenant shall, at its expense, repair all damage (except damage insured under insurance required of Landlord) caused by Tenant's employees, maintain striping, maintain all glass on the premises other than that located in the space leased by CR Realty, and perform custodial services to keep the surfaces and stairways within the Premises in a clean condition and free of snow and ice. After April 1, 1991, Tenant shall for the remainder of the lease term assume the responsibility for and the cost of elevator maintenance contract containing the same terms and provisions as the contract now in place by Landlord as well as the state elevator inspection. Landlord shall retain responsibilities for structural repairs for the system, to the extent not covered by elevator maintenance agreements. All other maintenance, repair and/or replacement of or on the Premises shall be promptly and diligently performed by Landlord at Landlord's expense, so that the Premises shall be in good condition and repair at all times.

Anything in this Lease to the contrary notwithstanding, Landlord agrees that if, in an emergency, it shall become necessary to promptly make any repairs required to be made by Landlord, Tenant may, at its option, proceed forthwith to have such repairs made and pay the cost thereof. Landlord agrees to reimburse Tenant the cost of such repairs on demand, and also agrees that if such payment is not made within fifteen (15) days after receipt of Tenant's statement of the amount due and evidence of Tenant's payment thereof, Tenant may deduct the amount so expended by it from rent due or to become due. In the event Tenant shall elect not to make such repairs, it will promptly notify Landlord of the need for such repairs.

The parties acknowledge that Landlord will be making repairs to the Phase II Parking facilities, including structural repairs, during the term of this Lease,

which repairs may impact upon parking and result in a loss of gross receipts, until Tenant can rebuild its business operations. If, as a result of such repairs, gross receipts in Phase II are reduced by ten percent (10%) or more over a period of five (5) days, Tenant may, upon written notice by Tenant to Landlord, elect to have the parties negotiate in good faith a reasonable reduction in rent, including the period such reduction shall be in effect. If the parties are unable to reach a mutual agreement within thirty (30) days, such determination shall then be made by arbitration, based on the reduction in gross receipts, by three disinterested persons, one of whom shall be selected by Landlord, one by Tenant and the third by the two thus appointed. The decision of the arbitrators shall be final and binding on the parties hereto.

20. FIRE INSURANCE. Landlord shall, at its expense, maintain fire and extended coverage, vandalism and malicious mischief insurance coverage for buildings, improvements and any other real or personal property of Landlord located on the Premises in an amount equal to the full replacement cost thereof.

21. RELEASE AND WAIVER OF SUBROGATION. In the event all or any part of the Premises (including any buildings, improvements or other real or personal property located thereon or therein) are damaged or destroyed by fire or other casualty, and if any loss is suffered as a result thereof, the rights or claims of either party or its employees, agents, successors or assigns against the other with respect to liability for any such loss, destruction or damage are hereby released and discharged and any and all rights or claims under the above insurance coverage are hereby waived.

All such policies shall contain a clause or endorsement providing that the insurance shall not be prejudiced if the insured has waived its right of recovery (including subrogation rights) against any person or company prior to the date of loss, destruction or damage.

22. MAJOR TENANTS. The parties acknowledge that a substantial portion of gross receipts arises from or is related to customers, patrons, invitees, tenants, visitors and guests of major tenants ("Major Tenants") in the Premises, including but not limited to Peoples Trust Bank, Hilton Hotel, Summit Bank, Indiana & Michigan Electric Co. and The Grand Wayne Center. In the event one or more Major Tenants significantly reduces its parking spaces in the Premises or discontinues parking in the Premises, Tenant may, upon written notice to Landlord, elect to have the parties negotiate in good faith a reasonable reduction in rent including the period such reduction shall be in effect. If the parties are unable to reach a mutual agreement within thirty (30) days, such determination shall then be made by arbitration, based on the reduction in gross receipts, by three disinterested persons, one of whom shall be selected by Landlord, one by Tenant and the third by the two thus appointed. The decision of the arbitrators shall be final and binding on the parties hereto.

23. ABATEMENT OF RENT. If Landlord's failure to perform its obligations hereunder creates a condition which interferes substantially with the normal use of the Premises, or an event or condition occurs which is unforeseen and beyond the control of Tenant, which prevents or substantially interferes with the normal use of the Premises or prevents or substantially reduces access by customers to the Premises, and, as a consequence, Tenant is compelled to discontinue business in the Premises, in whole or in part, then the rent shall be entirely or proportionately abated (depending upon the nature and/or extent of such interference, event or condition) during the time of such discontinuance of or interference with business, but no such abatement shall continue beyond the time that the interference, event or condition no longer exists, regardless of any delay by Tenant in resuming operation of business after that time.

24. PEACEABLE POSSESSION. Landlord covenants and agrees that Tenant, upon performing the terms and conditions of this Lease to be performed by Tenant, shall have peaceable and quiet enjoyment and possession of the Premises during the term without interruption by Landlord, its successors, assigns, or any person or company claiming by or through it, or third parties. Landlord further agrees that if Tenant should be made a party in any legal proceeding affecting Tenant's right of continuous and quiet possession, Landlord shall reimburse Tenant for reasonable attorney's fees and/or other expenses incurred by Tenant in defending its rights under this Lease, and any such expense may be applied by Tenant against rent due or to become due.

Landlord agrees to save, indemnify and hold Tenant harmless from any and all actions, causes of action, claims, losses, damages, costs and liabilities arising out of or in any way connected with Landlord's prior use of the Premises or the cancellation or termination of any lease or tenancy of the Premises prior in point of time to this Lease.

25. SURRENDER OF POSSESSION. Upon termination of this Lease by lapse of time or otherwise, Tenant agrees that it will surrender and deliver to Landlord physical possession of the Premises, together with all improvements and appurtenances therewith in the same condition as at the beginning of this Lease reasonable wear and tear and loss or damage by fire or other casualty excepted.

26. ASSIGNMENT. Tenant agrees that it will not assign or transfer this Lease or any interest herein without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Landlord further agrees not to assign, mortgage, pledge or encumber this Lease or any rents due or to become due hereunder without first obtaining the written consent of Tenant, provided however, such consent shall not be needed for an assignment of this Lease to a purchaser in connection with a bona fide sale of the Premises. This Lease and Tenant's rights hereunder shall not be disturbed on account of such sale so long as Tenant keeps and performs its agreements hereunder.

Tenant is hereby given the right to assign this Lease to a corporation

substantially all of the stock of which is owned by Tenant and/or to collaterally assign its right, title and interest herein to a financial institution as security for any present or future loans to Tenant.

27. EQUIPMENT AND IMPROVEMENTS. Tenant may install such equipment or improvements which the parties mutually agree should be installed as part of the revenue and traffic control system and operational requirements for the Premises.

Except for Tenant's personal property, including trade fixtures, which may be removed from the Premises by Tenant at the termination of this Lease, title to the equipment and improvements shall vest in Landlord upon installation.

Notwithstanding ownership of such equipment and improvements in Landlord, the total cost thereof shall be amortized by Tenant over the Initial Term of this Lease, on a straight-line basis. Should this Lease be terminated for any reason prior to expiration of the amortization period, Landlord shall reimburse Tenant for its unamortized cost, such reimbursement to be paid to Tenant within ten (10) days after receipt by Landlord of Tenant's statement setting forth the description and cost and the amount due and payable, or Tenant may offset such amount against rent due or to become due.

Tenant further accepts the responsibility and cost of maintaining the computer system, including but not limited to all hardware and software. Tenant agrees to maintain existing software modules and implement revisions required to maintain the current level of operation. Tenant will enter into a maintenance contract (s) to service the parking revenue control system. Tenant shall not be responsible for replacement of any parts or devices required prior to commencement of this Lease. The system shall not be replaced or modified without express written consent of Landlord.

Landlord covenants and agrees that it will not make or construct any improvements or additions on or over the Premises without the written consent of Tenant.

28. TERMINATION. Either party shall have the right to terminate this Lease upon a breach by the other party of any of the covenants, terms and conditions hereof, provided the defaulting party first receives written notice of such breach and fails to remedy same within thirty (30) days after notice thereof is received, or fails to commence curing such breach with said thirty day period, in the event such breach cannot be reasonable cured within thirty days.

Should Landlord default in the payment of real estate taxes or assessments or in the payment of any mortgage installment, Tenant may, at its option, cure such default and deduct the amount paid from rent due or to become due.

Either party shall also have the right to terminate this Lease in the event

the other party files a voluntary petition or similar action in bankruptcy, insolvency, receivership or makes an assignment for the benefit of creditors.

29. NOTICES. Any notice or communication required to be given to or served upon either party hereto shall be given or served by personal service or express delivery or by mailing the same, postage prepaid, by United States registered or certified mail, return receipt required, at the following addresses:

TO LANDLORD: City of Fort Wayne
Board of Public Works and Safety
City County Building
One E. Main St.
Fort Wayne, IN 46802

WITH COPY TO: Public Transportation Corp
801 Leesburg Road
Fort Wayne, Indiana

TO TENANT: APCOA, INC.
25550 Chagrin Blvd., # 300
Cleveland, OH 44122
Att: Legal Dept.

WITH COPY TO: Vice President
APCOA, Inc.
2104 Carew Tower
Cincinnati, Oh 45202

Either party may designate a substitute address at any time hereinafter by written notice thereof to the other party.

30. OPTION TO EXTEND. Tenant is hereby granted an option to extend the term of this Lease for one additional period of five (5) years upon the same terms and conditions, provided Tenant shall notify Landlord in writing of the exercise of this option at least sixty (60) days prior to the expiration of the Initial Term or any extended term. If this option to extend is not exercised by Tenant, the term shall nevertheless continue thereafter on a year-to-year basis, as set forth in Section 4 herein.

31. BROKERS. Landlord and Tenant warrant and represent each to the other that there are no brokers or finders involved in the procurement of this Lease, and each party agrees to indemnify and hold the other party harmless from any claims for commissions or fees.

32. INTERPRETATION. This Lease shall be governed by and construed in accordance with the laws of the state wherein the Premises are situated.

33. RELATIONSHIP. Landlord shall not, in any event, be deemed to be a partner or joint venturer of Tenant in the conduct of its business. The relationship of the parties hereto shall at all times be solely that of landlord and tenant.

34. UNION SUCCESSORSHIP. Parties acknowledge that the parking garage employees of the City of Fort Wayne have been unionized. Landlord represents that all such union employees have been offered alternative city employment. Landlord further acknowledges that Tenant shall have the right to employ its own employees and that said employees are not deemed to be city employees.

35. NON-DISCRIMINATION. Tenant covenants that no person shall be excluded from employment or from use of the facilities or otherwise be subjected to discrimination on the grounds of race, color, gender or national origin and that said Tenant shall comply with all local, state and federal ordinances, statutes and regulations governing civil rights and non-discrimination.

36. RECORDING. This Lease shall not be filed for public record. If requested by either party, the parties agree to execute a Memorandum of Lease describing the Premises, giving the term of this Lease, extension or renewal rights, if any, and referring to this Lease, which memorandum may be recorded by either party.

37. PARTIES BOUND. This Lease shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors, executors, administrators, legal representatives and permitted assigns.

38. APPROVAL BY COMMON COUNCIL. This agreement shall be effective only upon approval by the Common Council of the City of Fort Wayne. In the event said approval shall not be forthcoming within 90 days of the date this agreement is executed by the Mayor of the City of Fort Wayne, either party may elect to terminate this agreement upon ten days notice.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date first above written.

LESSEE

APCOA, INC.


By 

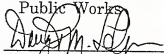
LANDLORDS

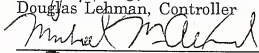
FORT WAYNE PUBLIC TRANSPORTATION
CORPORATION

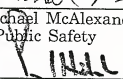
By 

CITY OF FORT WAYNE
BOARD OF WORKS & SAFETY

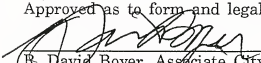

Charles E. Layton, Director of
Public Works


Douglas Lehman, Controller

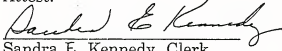

Michael McAlexander, Director of
Public Safety


Paul Helmke, Mayor

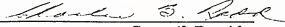
Approved as to form and legality: .


R. David Boyer, Associate City
Attorney

Attest:


Sandra E. Kennedy, Clerk

Approved: COMMON COUNCIL OF THE
CITY OF FORT WAYNE,
INDIANA

By 
Council President



JACK RICCHIUTO
President
Airport Properties - Central

January 9, 1995

David Boyer, Esq.
Associate City Attorney
City of Fort Wayne
300 Metro Boulevard
Fort Wayne, IN 46802

Re: Fort Wayne Civic Center
Fort Wayne, Indiana
APCOA No. 02239/02240

Dear Mr. Boyer:

The purpose of this letter is to (a) amend the October 23, 1990 Lease of Parking Garage Facility, with respect to the parking garage at the captioned location ("Premises"), which lease ("Lease") is by and between the City of Fort Wayne and Fort Wayne Public Transportation Corporation (together, "Landlord") and APCOA, Inc. ("Tenant"); and (b) exercise Tenant's option to extend the Lease for an additional five (5) years, commencing November 1, 1995 and expiring October 31, 2000.

Pursuant to its right under Section 30 of the Lease, Tenant hereby exercises its five-year option to renew, as aforesaid.

For good and valuable consideration, Tenant shall install certain equipment and improvements at the Premises ("Equipment and Improvements"). Said Equipment and Improvements, and the approximate cost thereof ("Cost"), are specified in Exhibit "A" attached hereto and made a part hereof. The Equipment and Improvements shall be installed during the term of the Lease and title to same shall vest in Landlord immediately upon installation. The total actual Cost of the Equipment and Improvements shall be amortized by Tenant over a five (5) year period on a straight-line basis.

Landlord agrees that if the Lease should expire or be terminated for any reason prior to expiration of the five (5) year amortization period, then Landlord shall reimburse Tenant for the total unamortized portion of the actual Cost of the Equipment and Improvements, such reimbursement to be paid to Tenant within ten (10) days after receipt by Landlord of Tenant's statement

Parking Management & Development Services

APCOA, Inc./Chagrin Plaza East, 23811 Chagrin Blvd., Cleveland, OH 44122-5525 • Telephone: 216/591-9220 • Fax: 216/591-9468



setting forth the unamortized amount which is due and payable. Alternatively, Tenant may offset such amount against any rent which may be due or to become due.

Please indicate Landlord's acknowledgment of Tenant's exercise of its five-year option to renew and Landlord's agreement with the terms of this letter amendment by having Landlord's authorized representatives sign the enclosed duplicate of this letter amendment in the spaces provided below.

Very truly yours,

APCOA, Inc.

By: 

Jack Ricchiuto, President
Airport Properties-Great Lakes Region

FORT WAYNE PUBLIC TRANSPORTATION CORPORATION

By: 

(Name)

(Title) Chairman

CITY OF FORT WAYNE

By: _____

(Name)

(Title) _____



6-Jan-95 - 1:32pm Signature Control Systems, Inc.

Page

ORDER QUOTE

Signature Control Systems, Inc
425 N. Brice Road
P.O. Box 562
Blacklick, OH 43004
Telephone: 614/864-2222

Post-It* Fax Note	7671	Date	1/6/95	# of pages	2
To	Chuck Kerschmidt	From	Bob Briggs		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #		Fax #			

Dear Customer,

This Document Serves As A Quote For The Items Listed Below. Please Review The Information Presented Here. If You Have Any Questions Or You Wish To Place An Order, Please Contact Us At The Address Or Phone Number Printed Above And Refer To Our Quote Number 3203 In Your Correspondence.

Our Quote #: 3203 Your Customer #: 000513

Bill To:
APCOA (Ft. Wayne)
100 East Washington

Ship To:
APCOA (Ft. Wayne)
100 East Washington

Ship Via:
BEST WAY

Ft. Wayne, IN 46802

Ft. Wayne, IN 46802

SHIP DATE:
A.S.A.P.

Shipping Instructions:

Freight Terms: Payment Terms:
Net 30 Days

Item-No/Description	Quantity	Um	Price	Disc	Net Price
APD 93-8668 PASSPORT PLUS BAR CODE READER FEDERAL APD	5.00	EA	1,895.0000	.00	9,475.00
APD 93-8874 VALUE PASS READER FEDERAL APD	5.00	EA	535.0000	.00	2,675.00
APD 93-8875 VALUE PASS POSTING READER FEDERAL APD	1.00	EA	3,215.0000	.00	3,215.00
APD 88-12126 UPGRADE EXISTING SCAN SOFTWARE TO INCLUDE VALUE PASS	1.00	EA	1,820.0000	.00	1,820.00
BLB GF-ME800A SHM-B ASYNC SHORT HAUL MODEM BLACK BOX CORPORATION	2.00	EA	290.0000	.00	580.00
SCS PC 486 COMPUTER & MONITOR	1.00	EA	1,900.0000	.00	1,900.00
APD 88-12160 UPGRADE EXISTING PORT CONTROL FOR 16 DEVICES-GARAGE #1	1.00	EA	695.0000	.00	695.00

6-Jan-95 - 1:32pm Signature Control Systems, Inc.

Page

O R D E R Q U O T E

Item-No/Description	Quantity	Um	Price	Disc	Net Price
APD 88-12161 UPGRADE EXISTING PORT CONTROL TO 32 DEVICES-GARAGE 2	1.00	EA	1,042.0000	.00	1,042.00
APD 88-12007 SCAN PEAK COUNT SOFTWARE FEDERAL APD	1.00	EA	1,500.0000	.00	1,500.00
APD 88-12025 SCAN AUXILIARY COUNT SYSTEM FEDERAL APD	1.00	EA	1,500.0000	.00	1,500.00
SCS 2222 INSTALLATION SIGNATURE CONTROL SYSTEMS	1.00	EA	3,875.0000	.00	3,875.00
APD 11-3916 CONSTANT VOLTAGE TRANSFORMER FEDERAL APD	1.00	EA	370.0000	.00	370.00

Total: 28,647.00

*** The Above Total Does Not Include Misc. Charges, Freight And Sales Tax ***

AGREEMENT FOR INTREPRETATION OF
PARKING GARAGE LEASE DATED JUNE 4, 1985

WHEREAS, Hilton Hotel is Lessee, under lease dated June 4, 1985, of seventy-five (75) spaces in a parking garage owned by the City of Fort Wayne and the PTC, whose operation is directed by the Downtown Traffic Management Board of the City of Fort Wayne, and which garage is operated by APCOA, Inc. under a lease agreement with the owners, and

WHEREAS, difficulties have arisen under said lease concerning the ability to assure Hotel full use of the seventy-five (75) spaces leased thereunder, and

WHEREAS, other solutions have been tried and have found to be ineffective,

NOW, THEREFORE, it is agreed that the following shall be the operating structure under said lease:

Parking Space Utilization and Accounting

1. Hotel retains the right to the use of seventy-five (75) spaces in the parking structure and will continue to pay the monthly advance payment of Four Thousand Five Hundred Dollars (\$4,500.00).

2. The seventy-five (75) spaces will be covered by hotel issued passes. Garage operators shall provide a posting scanner to the hotel for purposes of issuing passes. Passes will be a disposable cardboard pass similar to the public parking garage receipt and the Hotel will issue such passes to customers as it chooses.

3. The parking garage operator shall furnish to Hotel a daily space utilization report broken down on an hourly basis to show the number of automobiles parked in the lot on hotel passes.

4. Hotel shall pay the parking operator on a monthly basis for every hotel pass car parked in the garage in excess of seventy-five (75) at any hourly reporting period. From the daily space utilization report, the parking garage operator shall determine the total number of

extra parking hours incurred by cars using hotel issued passes. Said determination will be made by computing the number of hotel pass cars parked in excess of seventy-five (75) at each hourly reporting period and totalling that number.

5. Hotel's payment will be computed by a mathematical formula as follows:

a. The total number of extra parking hours shall be divided by the number of hours it takes to reach the established maximum daily parking rate.

b. The whole number of the product shall be multiplied by the maximum daily rate.

c. Any remainder shall be multiplied times the hourly rate. The extra hour billing shall then be the total of the daily rate computation and the hourly rate computation.

By way of example, assume a maximum daily rate of \$4.00 per twenty-four hours and an hourly rate of \$1.25 per hour. On the day in question, Hotel had an excess of five (5) cars parked in the parking garage during one hourly period and an excess of four (4) cars in the parking garage during ten (10) other hourly periods.

Extra Parking Hours

$$\begin{array}{rcl} 10 \text{ hours} \times 4 \text{ cars} & = & 40 \\ 1 \text{ hour} \times 5 \text{ cars} & = & 5 \\ \text{TOTAL} & & 45 \end{array}$$

$$45/4 = 11 \text{ (remainder 1)}$$

$$\begin{array}{rcl} 11 \times \$4.00/\text{day} & = & \$44.00 \\ 1 \times \$1.25/\text{hours} & = & \underline{1.25} \end{array}$$

Extra Parking Fee \$45.25

Operating Understandings

6. Hotel will use its best efforts to collect all public access tickets from Hotel guests to whom a hotel pass is issued and to return such public access passes to Garage

Operator on a daily basis.

7. Where Hotel anticipates issuance of passes substantially in excess of the seventy-five (75) contemplated hereunder, the advance notification and reservation requirements of Section 3 of the original Lease shall be followed.

8. Full Situations. Hotel agrees that, upon notification from Garage Operator that the garage is full, issuance of hotel passes shall be suspended except for cases where the guest surrenders a public access ticket having an entry time subsequent to the full notification. Garage Operator shall notify Hotel as soon as the full occupancy ends.

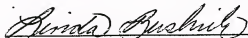
9. If the full occupancy situation occurs at a time when seventy-five (75) or more hotel passes are using the garage, Hotel shall have no recovery for the suspension of passes. If there are fewer than seventy-five (75) vehicles using hotel passes in the garage at the time of the full situation, Hotel shall receive a credit against its extra billings calculated as follows: the number of guests to whom hotel passes are denied (but not exceeding a number equal to 75 minus the number of hotel passes using the garage) times the published parking rate for the number of hours that passes are suspended. Garage Operator shall immediately notify Hotel at the time the full situation is ended and Hotel shall document the number of guests to whom passes were denied during such full situation.

IN WITNESS WHEREOF, this operating understanding has been executed this _____ day of April 4, 1995, by the undersigned.

DOWNTOWN TRAFFIC MANAGEMENT
BOARD

APCOA, INC.

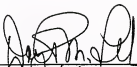
By:


Linda Buskirk, Director
Board of Public Works
City of Fort Wayne, Indiana

By:


Jack Ricchiuto

By:

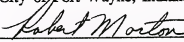

Douglas M. Lehman, Director
Division of Finance & Admin.
City of Fort Wayne, Indiana

*HILTON HOTEL

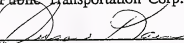
By:


President

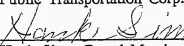
By:


Robert Morton, Manager
Public Transportation Corp.

By:


Susan Kain, Controller
Public Transportation Corp.

By:


Hank Sims, Board Member
Public Transportation Corp.



The City of Fort Wayne

Paul Helmke, Mayor

Q-95-04-04

MEMO

April 11, 1995

TO: Fort Wayne Common Council

FROM: Linda Buskirk, Director of Public Works *LB*

RE: Amendment to and extension of the lease between the City of Fort Wayne and APCOA, Inc., to manage the Civic Center Parking Garage

In October, 1990, the City of Fort Wayne privatized the management of the Civic Center Parking Garage. The privatization was facilitated through a lease arrangement between the City and APCOA, Inc. APCOA leases the Civic Center Garage and operates it. No City employees have worked at the Garage since the lease began.

The lease agreement allows for a five-year extension if APCOA requests it. This request normally would have occurred later this year at the end of the first, five-year lease term. However, the lease extension is being requested a few months early since the terms of the lease need to be amended anyway at this time. The amendment is being requested to help facilitate a new technology in Phase II of the Garage (the south side).

The new technology involves new ticket printers and scanners which will be used by the garage and the Hilton Hotel. Installation of this system will resolve problems experienced by both the hotel and the garage in utilizing and billing for parking spaces leased by the Hilton.

The requested amendment to the lease between APCOA and the City is explained in Exhibit B (attachment to the Resolution). It calls for APCOA purchasing the new system (hardware and software technology). The equipment will become the property of the City of Fort Wayne. The cost of the purchase and installation will be recovered by APCOA with a five year amortization, as described in Exhibit B.

Memo to City Council re: APCOA lease
Page 2

For your further information, attached to this letter is an "Agreement for Interpretation of Parking Garage Lease dated June 4, 1985". The 1985 lease is the agreement between the City and the Hilton Hotel, in which the Hilton must lease 75 parking spaces at the Civic Center Garage for a reduced rate, and may utilize additional spaces if necessary. The 1985 lease agreement did not explain how the 75 spaces would be reserved. The "Agreement for Interpretation" explains how the new technology to be installed by APCOA will be used to satisfy the terms of the 1985 lease.

attachment

DIGEST SHEET

TITLE OF ORDINANCE RESOLUTION

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

SYNOPSIS OF ORDINANCE 1. APPROVES FIVE (5) YEAR CIVIC CENTER
GARAGE LEASE EXTENSION; 2. APPROVES AMENDMENT TO THE LEASE FOR
NEW TICKET PRINTERS AND SCANNERS.

EFFECT OF PASSAGE LEASE EXTENSION AND AMENDMENT IS APPROVED.

EFFECT OF NON-PASSAGE LEASE EXTENSION AND AMENDMENT IS NOT
APPROVED.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) _____

ASSIGNED TO COMMITTEE (PRESIDENT) _____